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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,813	07/25/2001	Robert Nadon	1191/1E235US2	9938

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DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

EXAMINER

BRUSCA, JOHN S

ART UNIT PAPER NUMBER

1631

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/915,813

Applicant(s)

NADON ET AL.

Examiner

John S. Brusca

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 5-7, 11, 14, 16 and 17.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

John S. Brusca 2 November 2004

John S. Brusca
Primary Examiner
Art Unit: 1631

Continuation of 5. does NOT place the application in condition for allowance because: The applicants state that Chen et al. does not show the claimed step of deconvolving overlapping portions of distributions. The applicant's arguments against anticipation by Chen et al. are not persuasive. The instant specification states on page 10, lines 19-25 states:

Deconvolution of distributions. Where the observed data array includes contributions from two or more distributions, the present invention deconvolves those distributions into discrete probability density functions. This allows discrimination of hybridization signal from nonsignal and/or discriminating contributions of one label from another.

The applicants refer to a particular narrow definition of convolution. However it is not apparent from the specification that the term means anything other than the ordinary meaning of the term which is coiled or twisted with one part over another. Chen et al. shows a method of determining the levels and significance of spots in a DNA microarray that is hybridized to two samples labeled with different fluorescent labels. Chen et al. shows probability density functions of the data on pages 368-372, and further shows a working example on pages 372-373. Chen et al. determines the levels of each of the labels on each spot of the array and therefore shows deconvolution of the mixture of samples on the array. The applicants state that deconvolution must deconvolve a moving average of an overlapping portion of two distributions, however it is not apparent from the specification or the claims that the claimed subject matter is not anticipated by the deconvolution of two-label arrays taught by Chen et al.